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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-699

THE AMERICAN PARTY OF IDAHO,
JOHN McADAMS,
individually and as chairman of
THE AMERICAN PARTY of Idaho, Appellants,

*vs*

CECIL ANDRUS, Chairman of the
State Board of Examiners, and the
Idaho State Board of Examiners;
DENNISON C. AMBROSE, Director of the
Corporation Department of Revenue and
axation; JOE R. WILLIAMS, Idaho
State Auditor; PETE CENARRUSA,
Secretary of the State of Idaho;
and MARJORIE MOON, Treasurer of
the State of Idaho, Appellees.

IDAHO STATE DEMOCRATIC PARTY, Intervenor

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MOTION TO AFFIRM BY INTERVENOR/RESPONDENT

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## I.

## MOTION TO AFFIRM JUDGMENT

COMES NOW the Intervenor/Respondent and hereby respectfully moves this Honorable Court, pursuant to United States Supreme Court Rules 16, 33, 35 and 39, to take the following requested action:

Affirm the Judgment sought to be reviewed on appeal from the United States District Court for the District of Idaho on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument and for other reasons stated in the accompanying brief.

## II.

## CONTENTS OF BRIEF IN GENERAL

Pursuant to United States Supreme Court Rule 40 (3), (4) and (5), the Intervenor/Respondent will not reiterate a statement of the case nor will it include information as permitted by sections 1a, 1b, 1c and 1d of said rule inasmuch as there are no significant omissions or inaccuracies in Appellants' statement of the case nor is Intervenor/Respondent dissatisfied with the Appellants' presentation of sections 1a, 1b, 1c and 1d of said rule.

## III.

## THE PRESUMPTION OF CONSTITUTIONALITY FAVORS VALIDATION OF THE IDAHO ELECTION CAMPAIGN FUND ACT

The basic concept that state legislatures are presumed to have acted within their constitutional powers,



notwithstanding the fact that, in practice, some inquality may result, should be applied to the Idaho Election Campaign Fund Act dispute. The Idaho legislature's discretion, embodied in the Act (Sections 34-2501 et seq, *Idaho Code)* should not be set aside merely because its decision was "discriminating." If any state of facts reasonably may be conceived to justify the Act, it should be upheld. As was stated by *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961):

> The Constitutional safeguard is offended only if the classification rests on ground wholly irrelevant to the achievement of the State's objective.

In this case the Idaho legislature designed a law which allowed citizens individual input on a one-person, one-vote basis by giving concerned citizen voters an opportunity to designate on their individual state income tax returns one of three categories whereby designation gave evidence and authority for the Appellees to distribute money for political campaigns to various political parties in Idaho as directed by the Election Campaign Fund Act. The alternative categories were these: (1) to "check off" a political party which had its name on the tax return form, (2) to specify a particular party for the one dollar "tax gift" when the taxpayer's preferred party name was not on the return form, (3) to check off an undesignated category whereby the taxpayer waived his or her right to have the tax gift go to one party only.

The "check off" alternative of financing political campaigns is not difficult or unusual. At least seven states in this nation use tax deductions, check-offs or

credits as a means of encouraging citizens to contribute to the political process. Comment, "Going Public: Reforming Oregon's Campaign Finance System", 55 Oregon L. Rev. 446 (1976); See also, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, LEGISLATIVE APPROACHES TO CAMPAIGN FINANCE, OPEN MEETINGS AND CONFLICTS OF INTEREST 16-17 (1974). In reality, taxpayers are deferring to legislative judgment with regard to the differential treatment of candidates and political parties. See Comments on *Buckley v. Valeo*, 96 S. Ct 612 (1976) at 76 Columbia L. Rev. 852 (1976) and 24 Kansas L. Rev. 345 (Part I) and 537 (Part II) (1976).

The Idaho tax check-off system is a vehicle created by the state for political contributions which, in turn, are themselves a form of political expression protected by the First Amendment of the United States Constitution. The doctrine of one person, one vote should apply not only to the value of an individual's ballot, as in reapportionment cases, but also to the whole electoral process. In the instant case, that process begins with the individual state income tax return. To deny a taxpayer the opportunity of checking a category of undesignated political parties to receive the one dollar tax gift is to deny the principle of one person, one unit of political influence.

Of course, Section 4 (b) of the Idaho Election Campaign Fund Act limits the amounts of dollars a particular political party can receive. However, the limitations are also made with a view to recognizing minor-



ity interests in the political process. Specifically, as to designated funds, no party shall receive more than 50% of the funds regardless of the amount of popular support of that party. As to undesignated funds, no party, whatever its size or popular support, can receive a smaller or larger share of such fund than any other party.

The Idaho legislature has indeed been discriminating, but the effect of the law at issue is not one which constitutes invidious discrimination, a compelling threat to constitutional democracy or a significant interference with protected rights of political association. "Neither the right to associate nor the right to participate in political activities is absolute." *United States Civil Service Comm'n v. National Association of Letter Carriers*, 413 U.S. 548, 567 (1973).

The Intervenor/Respondent recognizes the American Party of Idaho has a First Amendment right to engage in discussion of public issues and to vigorously and tirelessly advocate the election of its own candidates. Nevertheless, it is saying that because the majority stays the majority, the law is wrong. On the contrary,

> the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. *Buckley v. Valeo*, *supra* at 649.

Appellants are denying the democratic principle of majority rule in saying, because the "incumbent"

powers, the Idaho State Democratic and Republican parties, retain control over the quality and range of debate on public issues in a political campaign, there is a fundamental unfairness in an act which assists them further. Even if this is true, the Idaho legislature must still balance its interest in having to fund hopeless candidacies with sums of money from the undesignated funds provided for by the Act.

The United States Constitution does not require the State of Idaho to provide more money to finance the efforts of "every nascent political group seeking to organize itself" just because it has chosen a pattern of campaign finance assistance based upon the popular vote and determinants which can be drawn from it. *American Party of Texas v. White*, 415 U.S. 767, 794 (1974); *Buckley v. Valeo, supra at* 672-673. The formula of campaign assistance does not have to be precise.

The presumption of the constitutionality of the Act has not been sufficiently rebutted by the Appellants. *McDonald v. Board of Election Commissioners*, 413 U.S. 458, 567 (1973).

## IV

## THERE IS NO INVIDIOUS CLASSIFICATION OF POLITICAL PARTES FOSTERED OR PROMOTED BY THE DISTRIBUTION OF UNDESIGNATED FUNDS AS DIRECTED BY STATUTE

The claim of invidious discrimination by the Appellants does not hold muster because there is no record evidence of same. This Court has stated that under



these circumstances courts should generally be "hesitant to invalidate legislation which on its face imposes even-handed restrictions." *Buckley v. Valeo, supra* at 641. Had Appellants demonstrated a measurable quantity of community and voter support at the Three-Judge District Court level, that Court may well have found the Act to be an excessive and impractical burden upon Appellants. Yet, Appellants have offered no new or better determinants for the legislative objective of assisting political parties in their financing of political campaigns. Absent information other than past political support as represented by popular vote totals, the claims of Appellants are purely speculative as to what could happen in a hypothetical situation which might later occur.

The Abstract of Votes cast at the General Election on November 5, 1974 in the State of Idaho, as compiled by Idaho Secretary of State Pete T. Cenarrusa, formed the basis of the distribution of funds, designated and undesignated, for the 1976 political campaigns in Idaho. A review of those statistics indicates that the Appellants in Idaho ran only four candidates for 10 major U.S. and Idaho political offices. The percentages of votes cast for American Party candidates in those four races are as follows:

| Office | Total Votes Cast | Percentage & Number | |
|---|---|---|---|
| United States Senate | 258,857 | 1.8% | 4,635 |
| Governor | 259,672 | 2.6% | 6,759 |
| Lt. Governor | 254,810 | 2.4% | 6,319 |
| Treasurer | 202,443 | 15.6% | 31,570 |

(*See* Appendix A for Complete Abstract)

In each case Appellants' candidates received vote totals so miniscule as not to have any significant effect on any of the "major party" candidates. Even where the American Party candidate was the sole opposition for the Democratic candidate, Appellants' candidate received only approximately one-seventh of the total vote.

Appellants demand strict scrutiny in reviewing the constitutionality of the law but show no demands made upon themselves to demonstrate a measurable quantity of voter and community support. Comparative voting statistics prove the Act does preserve the integrity of the Idaho electoral process and fairly reflects public sentiment.

Appellants ask for an equal voice in the electoral system but do not produce the popular backing of the citizenry even without the Act. The 1974 Idaho General Election statistics were compiled based upon an election which had no Act assistance. There is no showing that a change of the undesignated fund section will significantly change future election day outcomes.

Appellants say that unless the undesignated fund distribution formula is changed, new or minor parties will be forced to cater to the money influences which the campaign financing act is seeking to play down. The argument rings hollow. At best, the Appellants can get 50% of 90% of undesignated funds. Along with any number of other parties, it can secure an equal share of the remaining 10 per cent.

Appellants should rather want to emphasize public drives or campaigns for designated funds for its party. The bulk of check-offs has gone to designated rather than undesignated funds. (See Appendices B and C)



Appellants have not shown even a modicum of support, a standard which they themselves cite as a basis for distributing funds to aspirant political parties. *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Appellants may never succeed in achieving funding parity but the reason is not the Idaho Election Campaign Fund. Act. The reason has as much to do with Appellants' own weak, unorganized political history.

Appellants argue that use of the preceding gubernatorial election results as a basis for undesignated fund distribution promotes obsolete and "all but dead" parties. On the other hand, they argue "legislative enactments which tend to dilute the political strengths of certain elements of the population are constitutionally invalid." It is alright, in other words, to do away with parties which are "behind the times" but not permissible to stifle the slow, growth of the American Party of Idaho. The reasoning is inconsistent.

## V

## CONCLUSION

Intervenor/Respondent respectfully requests this Court to affirm the judgment of the Three-Judge Federal District Court sitting in the United States District Court for the District of Idaho which granted Summary Judgment in favor of the Defendants and against Plaintiffs. For the reasons advanced in this brief, the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

DATED this 4th day of February, 1977.

Respectfully Submitted,
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Appendices A, B & C Following

# ABSTRACT OF VOTES

## Cast at the General Election November 5, 1974
## STATE OF IDAHO

Issued by Pete T. Cenarrusa, Secretary of State

| COUNTIES | U.S. Senate | | | Representative in Congress | | | | Governor | | | Lieutenant Governor | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | First District | | Second District | | | | | | | |
| | Smith | Church | Stoddard | Symms | Cox | Hansen | Hanson | Murphy | Andrus | Vetter | Ravenscroft | Evans | Olson |
| | Rep. | Dem. | Amer. | Rep. | Dem. | Rep. | Dem. | Rep. | Dem. | Amer. | Rep. | Dem. | Amer. |
| Ada | 20,357 | 26,439 | 779 | 21,878 | 14,092 | 5,120 | 5,550 | 12,321 | 34,214 | 1,169 | 21,541 | 24,682 | 1,390 |
| Adams | 597 | 613 | 21 | 805 | 376 | — | — | 336 | 878 | 19 | 551 | 583 | 29 |
| Bannock | 5,869 | 12,111 | 318 | — | — | 8,734 | 9,266 | 3,443 | 14,387 | 491 | 5,652 | 12,108 | 463 |
| Bear Lake | 1,150 | 1,395 | 49 | — | — | 1,573 | 950 | 887 | 1,585 | 135 | 1,200 | 1,214 | 114 |
| Benewah | 802 | 1,511 | 19 | 1,365 | 856 | — | — | 481 | 1,909 | 14 | 641 | 1,584 | 17 |
| Bingham | 3,396 | 5,484 | 250 | — | — | 4,880 | 4,062 | 2,284 | 6,480 | 369 | 4,292 | 4,469 | 331 |
| Blaine | 903 | 1,615 | 31 | — | — | 995 | 1,147 | 533 | 1,881 | 55 | 1,065 | 1,287 | 35 |
| Boise | 529 | 721 | 15 | 777 | 405 | — | — | 356 | 902 | 34 | 546 | 628 | 53 |
| Bonner | 2,241 | 4,350 | 121 | 3,350 | 3,064 | — | — | 1,636 | 4,961 | 163 | 2,183 | 4,010 | 192 |
| Bonneville | 7,539 | 9,215 | 335 | — | — | 8,544 | 8,177 | 5,122 | 11,559 | 428 | 8,621 | 7,967 | 432 |
| Boundary | 1,022 | 1,302 | 21 | 1,361 | 927 | — | — | 430 | 1,902 | 34 | 678 | 1,498 | 37 |
| Butte | 473 | 703 | 15 | — | — | 485 | 630 | 311 | 857 | 19 | 493 | 659 | 1 |
| Camas | 175 | 227 | 5 | — | — | 231 | 149 | 102 | 296 | 10 | 250 | 150 | 4 |
| Canyon | 11,614 | 10,428 | 263 | 15,096 | 7,005 | — | — | 6,834 | 15,127 | 413 | 11,371 | 10,282 | 444 |
| Caribou | 1,095 | 1,205 | 64 | — | — | 1,397 | 838 | 802 | 1,470 | 107 | 1,154 | 1,076 | 95 |
| Cassia | 2,893 | 2,212 | 229 | — | — | 3,552 | 1,688 | 1,831 | 3,066 | 420 | 3,174 | 1,787 | 326 |
| Clark | 168 | 183 | 8 | — | — | 205 | 137 | 164 | 199 | 7 | 215 | 131 | 6 |
| Clearwater | 577 | 2,039 | 51 | 1,132 | 1,493 | — | — | 294 | 2,348 | 43 | 615 | 1,966 | 59 |
| Custer | 711 | 428 | 22 | — | — | 575 | 504 | 534 | 576 | 45 | 692 | 391 | 19 |
| Elmore | 1,169 | 2,311 | 45 | — | — | 1,397 | 1,723 | 774 | 2,712 | 53 | 1,299 | 2,066 | 58 |
| Franklin | 1,794 | 1,441 | 100 | — | — | 2,137 | 1,098 | 1,059 | 2,105 | 173 | 1,390 | 1,701 | 134 |
| Fremont | 1,649 | 1,832 | 37 | — | — | 2,030 | 1,254 | 1,169 | 2,283 | 91 | 1,825 | 1,592 | 77 |
| Gem | 1,722 | 2,046 | 61 | 2,274 | 1,444 | — | — | 1,139 | 2,628 | 69 | 1,739 | 1,890 | 81 |
| Gooding | 1,899 | 1,803 | 61 | — | — | 1,912 | 1,480 | 1,192 | 2,461 | 91 | 2,169 | 1,492 | 56 |
| Idaho | 1,970 | 2,276 | 56 | 2,498 | 1,690 | — | — | 1,066 | 3,150 | 84 | 1,575 | 2,512 | 72 |
| Jefferson | 2,359 | 1,901 | 103 | — | — | 2,611 | 1,394 | 1,801 | 2,460 | 122 | 2,591 | 1,586 | 83 |
| Jerome | 2,252 | 1,693 | 63 | — | — | 2,298 | 1,283 | 1,237 | 2,655 | 135 | 2,531 | 1,351 | 90 |
| Kootenai | 4,741 | 7,952 | 104 | 7,042 | 5,578 | — | — | 3,272 | 9,512 | 112 | 4,327 | 7,858 | 109 |
| Latah | 2,157 | 6,438 | 121 | 3,775 | 4,787 | — | — | 1,307 | 7,301 | 112 | 2,845 | 5,548 | 142 |
| Lemhi | 1,150 | 905 | 222 | — | — | 1,311 | 838 | 1,148 | 1,017 | 111 | 1,416 | 701 | 65 |
| Lewis | 439 | 914 | 26 | 658 | 642 | — | — | 240 | 1,147 | 6 | 377 | 954 | 13 |
| Lincoln | 696 | 628 | 29 | — | — | 731 | 505 | 492 | 832 | 48 | 860 | 462 | 28 |
| Madison | 2,178 | 2,463 | 103 | — | — | 3,048 | 1,620 | 1,634 | 2,964 | 138 | 2,617 | 1,964 | 133 |
| Minidoka | 2,280 | 2,392 | 144 | — | — | 2,747 | 1,983 | 1,338 | 3,215 | 259 | 2,744 | 1,833 | 203 |
| Nez Perce | 2,558 | 6,928 | 158 | 4,147 | 5,331 | — | — | 1,249 | 8,280 | 120 | 2,634 | 6,688 | 188 |
| Oneida | 671 | 734 | 38 | — | — | 736 | 653 | 440 | 967 | 46 | 399 | 1,016 | 37 |
| Owyhee | 926 | 994 | 21 | 1,347 | 537 | — | — | 695 | 1,228 | 27 | 1,006 | 838 | 38 |
| Payette | 1,846 | 2,114 | 66 | 2,552 | 1,333 | — | — | 1,239 | 2,759 | 63 | 1,890 | 1,923 | 90 |
| Power | 601 | 1,271 | 32 | — | — | 941 | 798 | 404 | 1,476 | 44 | 794 | 1,064 | 33 |
| Shoshone | 1,534 | 3,662 | 47 | 2,328 | 2,742 | — | — | 1,186 | 4,056 | 52 | 1,479 | 3,501 | 53 |
| Teton | 527 | 623 | 17 | — | — | 734 | 386 | 424 | 722 | 18 | 628 | 490 | 12 |
| Twin Falls | 7,794 | 6,778 | 303 | — | — | 8,350 | 5,486 | 4,170 | 9,898 | 737 | 8,939 | 5,168 | 404 |
| Valley | 772 | 1,053 | 23 | 1,108 | 637 | — | — | 463 | 1,404 | 19 | 799 | 971 | 36 |
| Washington | 1,375 | 1,807 | 39 | 1,911 | 1,062 | — | — | 892 | 2,313 | 54 | 1,377 | 1,666 | 37 |
| TOTALS | 109,072 | 145,140 | 4,635 | 75,404 | 54,001 | 67,274 | 53,599 | 68,731 | 184,142 | 6,759 | 115,184 | 133,307 | 6,319 |
| PLURALITY | 36,073 | | | 21,413 | | 13,675 | | 115,451 | | | 18,123 | | |



# ABSTRACT OF VOTES

## Cast at the General Election November 5, 1974
## STATE OF IDAHO

| Sec. of State | | Auditor | | Treasurer | | Attorney General | | Superintendent of Public Instruction | | CONSTITUTIONAL AMENDMENTS | | | | Initiative No. 1 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | SJR 114 | | SJR 118 | | | |
| Cenarrusa | Daniels | Greenberk | Williams | Moon | Hunsaker | Kidwell | Park | Moore | Truby | | | | | | |
| Rep. | Dem. | Rep. | Dem. | Dem. | Amer. | Rep. | Dem. | Rep. | Dem. | Yes | No | Yes | No | Yes | No |
| 33,307 | 13,586 | 18,711 | 27,784 | 38,423 | 7,876 | 26,131 | 21,480 | 19,947 | 26,923 | 23,584 | 17,162 | 26,454 | 14,904 | 35,184 | 7,494 |
| 777 | 349 | 314 | 803 | 924 | 78 | 668 | 508 | 473 | 590 | 508 | 492 | 602 | 402 | 833 | 284 |
| 10,021 | 7,842 | 5,442 | 12,339 | 14,674 | 3,145 | 9,209 | 8,916 | 6,091 | 11,897 | 10,595 | 5,515 | 10,579 | 5,487 | 12,558 | 3,288 |
| 1,448 | 993 | 960 | 1,464 | 1,875 | 218 | 1,108 | 1,296 | 1,102 | 1,278 | 1,010 | 1,143 | 1,176 | 1,007 | 1,275 | 1,029 |
| 844 | 1,304 | 562 | 1,585 | 1,828 | 52 | 672 | 1,494 | 633 | 1,403 | 1,385 | 682 | 1,508 | 549 | 1,838 | 375 |
| 5,915 | 3,069 | 3,374 | 5,593 | 7,048 | 1,883 | 4,838 | 4,205 | 4,299 | 4,711 | 5,228 | 2,880 | 5,462 | 2,527 | 6,299 | 1,835 |
| 1,724 | 628 | 700 | 1,502 | 1,874 | 102 | 1,019 | 1,327 | 958 | 1,154 | 1,407 | 781 | 1,519 | 628 | 1,986 | 378 |
| 821 | 360 | 381 | 791 | 944 | 83 | 693 | 532 | 507 | 562 | 609 | 506 | 679 | 431 | 935 | 283 |
| 3,120 | 3,103 | 2,053 | 4,051 | 4,982 | 429 | 3,059 | 3,075 | 2,293 | 3,758 | 3,429 | 2,420 | 3,780 | 2,039 | 4,820 | 1,418 |
| 11,349 | 5,372 | 7,648 | 9,106 | 13,878 | 2,780 | 8,897 | 8,127 | 7,726 | 9,148 | 9,029 | 5,766 | 9,549 | 5,066 | 11,895 | 3,946 |
| 933 | 1,217 | 669 | 1,458 | 1,715 | 92 | 831 | 1,259 | 719 | 1,315 | 1,042 | 961 | 1,225 | 801 | 1,524 | 630 |
| 720 | 410 | 317 | 802 | 937 | 51 | 552 | 594 | 484 | 609 | 625 | 404 | 649 | 349 | 832 | 281 |
| 285 | 116 | 151 | 230 | 293 | 21 | 233 | 160 | 182 | 180 | 197 | 156 | 203 | 142 | 295 | 93 |
| 15,497 | 6,265 | 8,999 | 12,398 | 17,586 | 3,838 | 13,086 | 8,967 | 10,745 | 10,831 | 10,606 | 7,903 | 11,856 | 6,773 | 14,533 | 4,590 |
| 1,351 | 887 | 855 | 1,362 | 1,675 | 209 | 1,048 | 1,138 | 1,462 | 729 | 1,079 | 955 | 1,250 | 784 | 1,356 | 748 |
| 3,896 | 1,346 | 2,346 | 2,840 | 3,841 | 1,300 | 3,440 | 1,804 | 3,264 | 2,002 | 2,369 | 2,121 | 2,636 | 1,837 | 3,431 | 1,350 |
| 257 | 91 | 158 | 180 | 228 | 24 | 222 | 129 | 188 | 130 | 143 | 165 | 185 | 129 | 228 | 114 |
| 1,148 | 1,448 | 489 | 2,088 | 2,332 | 230 | 715 | 1,895 | 652 | 1,970 | 1,509 | 727 | 1,549 | 661 | 1,858 | 405 |
| 750 | 278 | 368 | 654 | 780 | 67 | 692 | 394 | 491 | 532 | 481 | 491 | 602 | 379 | 784 | 290 |
| 2,063 | 1,270 | 950 | 2,192 | 2,747 | 214 | 1,538 | 1,821 | 1,181 | 2,003 | 2,020 | 1,119 | 2,096 | 921 | 2,655 | 581 |
| 1,780 | 1,390 | 1,305 | 1,874 | 2,244 | 372 | 1,396 | 1,743 | 1,723 | 1,350 | 1,185 | 1,499 | 1,436 | 1,256 | 1,673 | 1,209 |
| 2,207 | 1,189 | 1,371 | 2,024 | 2,598 | 180 | 1,934 | 1,516 | 1,780 | 1,478 | 1,690 | 1,337 | 1,702 | 1,209 | 2,280 | 914 |
| 2,413 | 1,209 | 1,234 | 2,318 | 2,818 | 214 | 1,987 | 1,717 | 1,447 | 2,114 | 1,607 | 1,615 | 1,865 | 1,376 | 2,642 | 886 |
| 2,483 | 1,006 | 1,363 | 2,081 | 2,714 | 212 | 1,863 | 1,600 | 1,717 | 1,637 | 1,757 | 1,342 | 2,022 | 1,052 | 2,740 | 742 |
| 2,168 | 1,789 | 1,121 | 2,725 | 3,385 | 139 | 1,813 | 2,444 | 1,340 | 2,578 | 2,277 | 1,375 | 2,469 | 1,139 | 3,130 | 811 |
| 2,884 | 1,218 | 1,783 | 2,342 | 2,906 | 440 | 2,471 | 1,734 | 2,317 | 1,650 | 1,740 | 2,122 | 1,987 | 1,839 | 2,335 | 1,629 |
| 2,818 | 1,025 | 1,552 | 2,191 | 2,864 | 266 | 2,233 | 1,628 | 1,947 | 1,684 | 1,974 | 1,402 | 2,199 | 1,175 | 2,858 | 909 |
| 6,023 | 5,958 | 4,143 | 7,684 | 9,473 | 434 | 6,019 | 6,156 | 4,356 | 6,960 | 6,879 | 4,228 | 7,345 | 3,469 | 9,292 | 2,485 |
| 4,774 | 3,483 | 2,421 | 5,629 | 7,155 | 983 | 3,404 | 4,978 | 2,862 | 5,451 | 5,858 | 1,751 | 5,871 | 1,661 | 6,799 | 996 |
| 1,524 | 598 | 983 | 1,135 | 1,489 | 183 | 1,284 | 850 | 1,243 | 844 | 852 | 1,034 | 1,027 | 845 | 1,266 | 770 |
| 564 | 711 | 274 | 990 | 1,087 | 31 | 399 | 879 | 349 | 860 | 796 | 374 | 786 | 369 | 1,008 | 277 |
| 963 | 342 | 481 | 787 | 993 | 92 | 740 | 581 | 639 | 508 | 637 | 523 | 745 | 438 | 1,015 | 286 |
| 3,285 | 1,348 | 2,175 | 2,453 | 3,550 | 1,023 | 2,714 | 1,969 | 2,747 | 1,895 | 2,322 | 1,757 | 2,535 | 1,488 | 3,174 | 1,057 |
| 3,416 | 1,329 | 1,854 | 2,826 | 3,732 | 940 | 2,543 | 2,175 | 2,642 | 2,087 | 2,345 | 1,734 | 2,635 | 1,434 | 3,353 | 1,050 |
| 4,526 | 4,794 | 2,202 | 7,083 | 7,978 | 1,154 | 3,232 | 6,215 | 2,758 | 6,630 | 6,010 | 2,144 | 6,102 | 1,967 | 7,004 | 1,197 |
| 623 | 766 | 308 | 1,114 | 1,082 | 101 | 559 | 799 | 491 | 836 | 604 | 570 | 700 | 472 | 858 | 370 |
| 1,345 | 496 | 641 | 1,146 | 1,400 | 108 | 1,069 | 810 | 691 | 853 | 788 | 817 | 946 | 668 | 1,244 | 502 |
| 2,413 | 1,349 | 1,441 | 2,281 | 2,821 | 253 | 2,191 | 1,698 | 1,813 | 1,811 | 2,010 | 1,336 | 2,271 | 1,061 | 2,940 | 823 |
| 1,183 | 636 | 567 | 1,234 | 1,484 | 101 | 946 | 908 | 828 | 892 | 1,067 | 605 | 1,091 | 559 | 1,342 | 407 |
| 2,066 | 2,864 | 1,286 | 3,640 | 4,087 | 150 | 1,848 | 3,162 | 1,497 | 3,314 | 2,906 | 1,580 | 3,121 | 1,368 | 3,634 | 1,192 |
| 703 | 377 | 406 | 696 | 832 | 75 | 594 | 517 | 500 | 472 | 503 | 503 | 556 | 437 | 696 | 344 |
| 10,047 | 3,834 | 5,609 | 7,621 | 9,720 | 1,126 | 7,663 | 6,288 | 6,655 | 6,912 | 6,376 | 4,202 | 6,836 | 3,837 | 8,945 | 2,474 |
| 1,203 | 540 | 545 | 1,179 | 1,496 | 80 | 953 | 846 | 652 | 978 | 968 | 668 | 1,093 | 544 | 1,398 | 370 |
| 1,952 | 1,067 | 969 | 1,983 | 2,381 | 212 | 1,596 | 1,492 | 1,207 | 1,530 | 1,386 | 1,125 | 1,540 | 938 | 2,157 | 617 |
| 159,557 | 89,252 | 91,479 | 154,256 | 198,873 | 31,570 | 130,002 | 121,906 | 107,828 | 137,087 | 131,180 | 87,972 | 139,118 | 76,405 | 178,705 | 51,707 |
| 70,305 | | 62,777 | | 167,303 | | 8,096 | | 29,259 | | 43,208 | | 62,713 | | 126,998 | |

PETER E. HEISER, JR.
Chief Deputy Attorney General
State of Idaho

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1 76 148 AFFIDAVIT OF DENNISON C. AMBROSE

THE AMERICAN PARTY OF IDAHO, JOHN McADAMS, individually and as chairman of THE AMERICAN PARTY of Idaho,

Plaintiffs,

--vs.--

CECIL D. ANDRUS, Chairman of the State Board of Examiners, and the Idaho State Board of Examiners; DENNISON C. AMBROSE, Director of the Corporation Department of the Idaho Department of Revenue and Taxation; JOE R. WILLIAMS, Idaho State Auditor; PETE CENARRUSA, Secretary of the State of Idaho; and MARJORIE MOON, Treasurer of the State of Idaho,

Defendants,

IDAHO STATE DEMOCRATIC PARTY,

Intervenor.

STATE OF IDAHO
County of Ada } ss:

I, Dennison C. Ambrose, being first duly sworn, depose and say that:



I am the duly appointed, acting and qualified Deputy Commissioner of Department of Revenue and Taxation of the State of Idaho, and am in charge of both corporate and individual income tax as part of my duties thereunder;

I am familiar with the number of individual tax-returns which were filed in the State of Idaho in 1976 and am also familiar with the number of individual income tax returns filed in 1976 in which individuals designated that one dollar be paid into the election campaign fund, pursuant to section 63-3088, *Idaho Code*, and, though no figures are yet available for 1975 tax returns, I am also familiar with the ratio of joint returns by husband and wife to the total number of individual tax returns as based on information gathered from the 1974 tax year;

I hereby state and affirm that these aforementioned figures are as follows:

*As of July 31, 1976:*

$47,362.00 was "checked off" for application to the election campaign fund at a rate of $1.00 per individual who utilized the §63-3088 check off procedure for tax year 1975;

approximately 295,000 Individual Tax Returns (Form 40) were filed for tax year 1975;

based upon 1974 tax year data, about 42% of all Individual Tax Returns would be filed by single persons or married persons filing a separate, rather than

joint, return, amounting to 123,900 single person returns for the 1975 tax year;

based upon 1974 tax year data, about 58% of all Individual Tax Returns would be filed by married persons filing jointly, amounting to 171,100 returns representing 342,200 individual persons for the 1975 tax year;

the approximate total number of individual persons who filed Individual Tax Returns for the 1975 tax year, based upon the above figures, is 466,100 each of whom could have "checked off" a $1.00 amount for the election campaign fund;

based upon the above figures approximately 10.16% (47362/466100) of the individual persons filing Individual Tax Returns for the 1975 tax year chose to participate in the election campaign fund procedure;

I do swear and affirm that the above figures are true and correct to the best of my knowledge;

Further affiant saith not.

DATED this 19 day of August, 1976.

DENNISON C. AMBROSE

SUBSCRIBED AND SWORN TO this 19th day of August, 1976.

NOTARY PUBLIC
Residing at Boise, Idaho
My Commission expires: 3/22/77



PETER E. HEISER, JR.
Chief Deputy Attorney General
State of Idaho

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1 76 148
AFFIDAVIT OF BENITO T. YSURSA, ESQ.

THE AMERICAN PARTY OF IDAHO, JOHN McADAMS, individually and as chairman of THE AMERICAN PARTY of Idaho,

*Plaintiffs,*

*vs.*

CECIL D. ANDRUS, Chairman of the State Board of Examiners, and the Idaho State Board of Examiners; DENNISON C. AMBROSE, Director of the Corporation Department of the Idaho Department of Revenue and Taxation; JOE R. WILLIAMS, Idaho State Auditor; PETE CENARRUSA, Secretary of the State of Idaho; and MARJORIE MOON, Treasurer of the State of Idaho,

*Defendants,*

IDAHO STATE DEMOCRATIC PARTY,

*Intervenor.*

STATE OF IDAHO
County of Ada } ss.

I, Benito T. Ysursa, Esq., being first duly sworn, depose and state that:

I am the duly appointed, acting, and qualified Deputy Secretary of State of the State of Idaho, and pursuant to my duties in such position am in charge of elections in the State of Idaho;

I am duly licensed as an attorney in the State of Idaho and am admitted to practice before the Supreme Court of the State of Idaho and the United States District Court for the District of Idaho;

I am familiar with the "undesignated" tax monies available for distribution to political parties in the State of Idaho under the formula provided in section 34-2503(b), *Idaho Code*, and do hereby state and affirm that the monies available and the distribution which would be applied under said subsection of the *Idaho Code* are as follows:

Total available: $16,752 x 90% = $15,076.80

To Democratic Party:
50% x $15,076.80 = $7,538.40 + $996.15
= $8,504.55

To Republican Party:
26.46% x $15,076.80 = $3,990.83 + $996.15
= $4,956.98

To American Party:
2.6% x $15,076.80 = $392 + $996.15
= $1,358.15

To Labor Party:
$996.15

To Libertarian Party:
$996.15



*(NOTE:* $996.15 equals 10% of the "undesignated" monies together with other undistributed monies which, by statute is distributed equally to all political parties in Idaho.)

The above figures and distribution formula are true and correct to the best of my knowledge;

Further affiant saith not.

DATED this 19th day of August, 1976.

BENITO T. YSURSA

SUBSCRIBED AND SWORN TO before me this 19th day of August, 1976.

MIREN E. ARTIACH
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 4-15-80

COUNTY OF ADA
STATE OF IDAHO } ss.

AFFIDAVIT
OF SERVICE

Paul J. Buser, of the firm of MARTIN, CHAPMAN, MARTIN & HYDE, CHARTERED, being first duly sworn, deposes and certifies that on this 4th day of February, 1977, three copies of the Motion to Affirm by Intervenor/Respondent were mailed, postage prepaid, to Attorney for the Appellants and Attorneys for the Appellees at the following addresses.

Preston G. Lutz
P.O. Box 8553
Boise, Idaho 83707

Wayne L. Kidwell
Idaho Attorney General
Attention:

Peter E. Heiser, Jr.
Statehouse — Room 225
Boise, Idaho 83720

I further certify that all parties required to be served have been served.

Counsel for Intervenor/Respondent

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Subscribed and sworn to before me this 4th day of February, 1977.

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Notary Public for Idaho
Residence: Boise, Idaho